

Internal Revenue Service

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Legend

Taxpayer:

State:

Statute A:

Statute B:

Statute C:

Dear :

Taxpayer is a local government entity in State. Taxpayer requests a ruling on the proper tax treatment of certain payments made to Taxpayer's employees under sections 104(a)(1) and 3121 of the Internal Revenue Code (the Code).

Statute A provides that when a member of the police department of any municipality is unable to work because of an on-the-job injury, their salary shall continue for a minimum of six months, with the municipality having the option of extending the period for up to an additional six months, not to exceed a total of twelve months.

Statute B similarly provides that when a member of the fire department of any municipality is unable to work because of an on-the-job injury, their salary shall continue for a minimum of six months, with the municipality having the option of extending the period for up to an additional six months, not to exceed a total of twelve months.

Statute B contains a special provision for burn injuries cause or sustained in while in the discharge of the member's duties.

Statute C provides that any full-time non-police and non-fire employee injured on the job shall continue to receive regular salary or rate of pay during absence from work, not to exceed a period of one thousand forty-four hours.

Section 104(a)(1) of the Code states that, "Except in the case of amounts attributable to (and not in excess of) deductions allowed under section 213 (relating to medical, etc. expenses) for any prior taxable year, gross income does not include--(1) Amounts received under workmen's compensation acts as compensation for personal injuries or sickness... ."

Section 1.104-1(b) of the Income Tax Regulations states that section 104(a)(1) excludes from gross income amounts that are received by an employee under a workmen's compensation act or under a statute in the nature of a workmen's compensation act that provides compensation to employees for personal injuries or sickness incurred in the course of employment. Section 104(a)(1) also applies to compensation which is paid under a workmen's compensation act to the survivor or survivors of a deceased employee. However, section 104(a)(1) does not apply to a retirement pension or annuity to the extent that it is determined by reference to the employee's age or length of service, or the employee's prior contributions, even though the employee's retirement is occasioned by an occupational injury or sickness.

Sections 3101 and 3111 of the Code impose Federal Insurance Contributions Act (FICA) taxes on employees and employers, respectively. FICA taxes apply to "wages," as defined in Code section 3121(a), that employers pay for "employment," as defined in section 3121(b).

Section 3121(a) of the Code provides, with certain exceptions, that for FICA tax purposes, the term "wages" means all remuneration for employment, including the cash value of all remuneration (including benefits) paid in any medium other than cash.

Section 3121(a)(2)(A) of the Code provides that "wages" does not include the amount of any payment on account of sickness or accident disability, but in the case of payments made to an employee or any of his dependents, excludes only payments received under a workmen's compensation law. Section 31.3121(a)(2)-1(d)(1) of the Employment Tax Regulations provides that a payment made under a workers' compensation law includes a payment made pursuant to a statute in the nature of a workers' compensation act.

Sections 3401 and 3402 of the Code provide, with certain exceptions, that every employer paying wages shall deduct and withhold upon such wages an income tax determined in accordance with tables or computational procedures prescribed by the Secretary of the Treasury. Payments made pursuant to a statute in the nature of a worker's compensation act that are excludable from gross income under Code section 104(a) are not subject to income tax withholding.

Accordingly, based on the representations made, and authorities cited above, we conclude as follows:

(1) Payments made to members of the Taxpayer's police and fire departments, pursuant to Statutes A and B for injuries sustained in the course of employment, are paid pursuant to a statute in the nature of workmen's compensation act and are excluded from gross income under section 104(a)(1) of the Code.

(2) Payments made to Taxpayer's non-police and non-fire employees, pursuant to Statute C for injuries sustained in the course of employment, are paid pursuant to a statute in the nature of a workmen's compensation act and are excluded from gross income under section 104(a)(1) of the Code.

(3) Payments made by Taxpayer under Statutes A, B, and C for injuries sustained in the course of employment are not subject to federal income tax withholding under sections 3401 and 3402 of the Code.

(4) Payments made by Taxpayer under Statutes A, B and C for injuries sustained in the course of employment are not "wages" under section 3121(a)(2)(A) and section 31.3121(a)(2)-1(d)(1) of the Employment Tax Regulations. Accordingly, such payments are not subject to FICA tax under sections 3101 and 3111.

We do not address your ruling requests numbers 5 and 6. Section 6.12 of Revenue Procedure 2011-1 provides that the Service will not issue a letter ruling or a determination letter on hypothetical situations.

This ruling is directed only to the Taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this ruling is being sent to your authorized representative.

Sincerely,

Harry Beker
Branch Chief, Health and Welfare Branch
Office of Division Counsel/Associate Chief
Counsel (Tax Exempt & Government Entities)

cc: